

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY (OWENSBORO)

JEFF TUCKER,

Plaintiff,

CASE NO.: 4:17-CV-00066-JHM-HBB

v.

CREDIT ONE BANK, N.A.,

Defendant and Third-Party Plaintiff,

v.

JESSICA TUCKER *a/k/a*
JESSICA PATINO,

Third-Party Defendant.

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THIRD-PARTY COMPLAINT

Defendant and third-party plaintiff herein, Credit One Bank, N.A. (“Credit One”), through undersigned counsel, hereby files this third-party complaint against third-party defendant, Jessica Tucker a/k/a Jessica Patino (“Patino”), and states:

INTRODUCTION

1. This action arises out of Patino’s provision of false information to Credit One.

2. On or about November 1, 2016, Patino applied for a credit card with Credit One. As part of the credit application process, Patino expressly authorized Credit One to contact her at any phone number, including cellular phones, she provided to Credit One or that Credit One obtained through other means.

3. On or about November 14, 2016, Patino called Credit One's automated account management telephone number and manually added telephone number (270) ***-5400 (hereinafter, the "-5400 number") to her Credit One account as her secondary contact number.

4. After she defaulted on her credit card payments to Credit One, Credit One initiated phone calls to Patino at the -5400 number that she provided to Credit One on November 14, 2016.

5. However, upon information and belief, Patino was not the subscriber or regular user of the -5400 number; rather, the subscriber or regular user of the -5400 number was her father and plaintiff herein, Jeff Tucker ("Tucker").

6. On or about May 19, 2017, Tucker filed a lawsuit against Credit One for allegedly violating the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, as a result of Credit One's calls to the -5400 number.

7. Patino's acts subject her to liability for negligent misrepresentation. Further, pursuant to her agreement with Credit One, Patino contractually agreed to indemnify Credit One for any costs associated with Tucker's lawsuit against Credit One.

8. Accordingly, Credit One seeks damages and indemnification from Patino for any damages suffered as a result of Patino's provision of false information.

PARTIES

9. Upon information and belief, Patino is a natural person residing in Ohio County in the Western District of Kentucky.

10. Credit One is a national association with its principal place of business at

6801 S. Cimarron Road, Las Vegas, Nevada 89113.

JURISDICTION AND VENUE

11. This Court has jurisdiction over the claims asserted by plaintiff Tucker against Credit One in Tucker's complaint under 28 U.S.C. § 1331 because Tucker's claims arise pursuant to 47 U.S.C. § 227.

12. This Court has jurisdiction over Credit One's claims against Patino pursuant to 28 U.S.C. § 1367 because such claims are so related to Tucker's claims against Credit One that they form part of the same case or controversy under Art. III of the U.S. Constitution.

13. This Court additionally has diversity jurisdiction over Credit One's claims against Patino pursuant to 28 U.S.C. § 1332 because the parties' citizenship is diverse and the amount in controversy exceeds \$75,000.

14. Venue is proper in this Court because a substantial part of the events giving rise to this claim occurred in this district.

STATEMENT OF FACTS

15. On or about November 1, 2016, Patino applied for a credit card account with Credit One.

16. Credit One approved Patino's credit card application and sent Patino the credit card and Cardholder Agreement to Patino in the same envelope. *See Exhibit A, Cardholder Agreement.*

17. The Cardholder Agreement stated as follows:

COMMUNICATIONS: (a) You are providing express written permission

and consent authorizing Credit One Bank or its agents to contact you **at any phone number** (including mobile, cellular/wireless, or similar devices) or email address **you provide at any time**, for any lawful purpose. The ways in which we may contact you include live operator, automatic telephone dialing systems (auto-dialer), prerecorded message, text/SMS message or email. Phone numbers and email addresses you provide include **those you give to us**, those from which you contact us or which we obtain through other means. Such lawful purposes include, but are not limited to: obtaining information; activation of the card for verification and identification purposes; account transactions or servicing related matters; suspected fraud or identity theft; **collection on the Account**; and providing information about special products and services. You agree to pay any fee(s) or charge(s) that you may incur for incoming communications from us or outgoing communications to us, to or from any such number or email address, without reimbursement from us.

(b) INDEMNIFICATION: If you provide telephone number(s) for which you are not the subscriber, you understand that you shall indemnify us for any costs and expenses, including reasonable attorneys' fees, incurred as a result of us contacting or attempting to contact you at the number(s).

(c) COMMUNICATION REVOCATION: If you do not want to receive communications as described in the previous paragraph, **you must:** (i) provide us with written notice revoking your prior consent, (ii) in that written notice, you must include your name, mailing address, and the last four digits of your Account number; (iii) advise whether you would like communications to cease via mail, telephone number(s), email, text/SMS, or cease in all forms; (iv) if you are requesting communications to cease via telephone number(s) and/or email, please provide the specific phone number(s) and email address; (v) you must send this written notice to: Attention – Credit One Bank Customer Service, P.O. Box 98850, Las Vegas, NV 89193-8850 . . .

See Exhibit A, ¶ 19(a) (emphasis added).

18. On November 14, 2016, Patino called Credit One's automated telephone account management system and completed an account verification process requiring her to confirm her identity and account by entering the full sixteen digits of her credit card number, as well as the last four digits of her Social Security Number.

19. During the November 14, 2016 call, Patino activated her Credit One credit card and account.

20. Additionally during the November 14, 2016 call, Patino manually added the -5400 number as her secondary contact number on her account but manually entering the full 10-digit -5400 telephone number into Credit One's automated telephone account management system.

21. Patino used her Credit One credit card and made charges to her Credit One account but defaulted on her payments to Credit One.

22. After Patino defaulted on her credit card payments to Credit One, Credit One began placing calls to the -5400 number in an attempt to reach Patino regarding her past-due account.

23. Per the terms of the Cardholder Agreement, by providing the -5400 number to Credit One, Patino represented she could lawfully be called at the -5400 number to discuss her account, including for the purpose of collecting any unpaid balance on her account.

24. Patino knew the manner in which the -5400 number would be used by Credit One, and knew or reasonably should have known Credit One would place calls to the -5400 number following her provision of the -5400 number to Credit One on November 14, 2016.

25. Credit One reasonably relied upon Patino's representation that the -5400 number was her telephone number and that she consented to be called at that number.

26. Tucker claims Credit One violated the TCPA by calling the -5400 number, which Tucker alleges is his phone number, without his prior express consent.

27. Credit One would not have initiated any calls to the -5400 number but for Patino having provided the phone number to Credit One on November 14, 2016.

28. In the Cardholder Agreement attached as Exhibit A, Patino agreed “[i]f [she] provide[d] telephone number(s) for which [she was] not the subscriber, [she] underst[oo]d that [she] shall indemnify [Credit One] for any costs and expenses, including reasonable attorneys’ fees, incurred as a result of [Credit One] contacting or attempting to contact [her] at the number(s).” *See Exhibit A*, ¶ 19.

29. Thus, to the extent Tucker seeks to hold Credit One liable under the TCPA, Credit One seeks to hold Patino responsible for the damages Credit One has incurred and will incur as a result of its reasonable reliance upon Patino’s false representations, including all attorney’s fees and costs incurred by Credit One in defending Tucker’s claims.

30. All conditions precedent to bringing this action have been satisfied or waived.

COUNT I: NEGLIGENT MISREPRESENTATION

31. Credit One incorporates the foregoing as if fully stated herein.

32. Patino represented the -5400 number belonged to her and that she could lawfully be contacted at that number regarding her financial obligation to Credit One.

33. If Tucker’s allegation that the 5400 number belongs to him, and that Patino did not have authority to consent to receive calls at the -5400 number, Patino’s representation was false and directly caused Credit One injury, including attorneys’ fees and defense costs defending Tucker’s action regarding Credit One’s calls to the -5400 number.

34. Patino knew, or should have known, her representation was false.

35. Patino knew, or should have known, her representation would induce Credit

One to call her at the -5400 number when she failed to pay the balance on her account owed to Credit One.

36. Credit One has been harmed and suffered economic injury proximately resulting from its reasonable and justifiable reliance upon Patino's representations in that it has been subjected to suit, incurred legal expenses and costs associated with the defense of the suit, injury to its reputation, financial loss relating to Patino's unpaid account, and faces the prospect of additional damages should Tucker succeed in his action against Credit One.

COUNT II: CONTRACTUAL INDEMNIFICATION

37. Credit One reincorporates the foregoing as if fully stated herein.

38. Patino represented the -5400 number belonged to her and that she could lawfully be contacted at that number regarding her financial obligation to Credit One.

39. Per the terms of the Cardholder Agreement, Patino agreed "[i]f [she] provide[d] telephone number(s) for which [she was] not the subscriber, [she] underst[oo]d that [she] shall indemnify [Credit One] for any costs and expenses, including reasonable attorneys' fees, incurred as a result of [Credit One] contacting or attempting to contact [her] at the number(s)." *See Exhibit A*, ¶ 19(b).

40. Tucker filed a complaint against Credit One on May 19, 2017 alleging statutory damages for violations of the TCPA. Tucker bases his lawsuit against Credit One on phone calls made to a phone number Patino provided to Credit One.

41. This phone number was only called as a result of Patino's default under the terms of the Cardholder Agreement by failing to make required payments on her credit

card account.

42. The calls at issue in Tucker's complaint were placed because Patino falsely provided the -5400 number to Credit One on November 14, 2016 and then defaulted on the Cardholder Agreement. As a result, all attorneys' fees and costs incurred in defending against Tucker's suit are fees and costs incurred as a result of Patino's knowing provision of false information to Credit One and subsequent account default.

43. Credit One is incurring attorneys' fees, court costs, and other costs in connection with defending Tucker's claims, the exact amount of which is unknown at this time.

44. Tucker's suit against Credit One, and Credit One's resulting damages, is the direct and proximate result of Patino's provision of Tucker's telephone number to Credit One and Patino's default on the Cardholder Agreement.

45. Credit One is entitled to complete indemnification by Patino for all costs of suit and attorneys' fees incurred in defending against Patino's action and for any sums for which it is found liable pursuant to the Cardholder Agreement. *See Exhibit A* at ¶ 19.

WHEREFORE, Credit One Bank, N.A. requests the Court enter judgment in its favor and against Jessica Tucker a/k/a Jessica Patino for damages incurred as a result of Jeff Tucker's lawsuit against Credit One, including the amount of any judgment entered in favor of Tucker and all of Credit One's attorney's fees and costs incurred in defending Tucker's suit and in bringing this third-party complaint, and any further relief this Court deems proper.

Dated: May 4, 2018

Respectfully submitted,

/s/ Lauren D. Lunsford

Lauren D. Lunsford
Reminger Co., LPA - Louisville
730 W. Main Street, Suite 300
Louisville, KY 40202
Telephone No.: (502) 584-1310
Email: llunsford@reminger.com
*Counsel for Defendant,
Credit One Bank, N.A.*

CERTIFICATE OF SERVICE

I certify that on May 4, 2018, a copy of the foregoing was filed electronically in the ECF system. Notice of this filing will be sent to all current parties of record by operation of the Court's electronic filing system. Current parties may access this filing through the Court's system.

/s/ Lauren D. Lunsford

Lauren D. Lunsford
*Counsel for Defendant,
Credit One Bank, N.A.*